THE HON'BLE SRI JUSTICE K.C.BHANU

CRIMINAL APPEAL NO.425 OF 2002

JUDGMENT:

1) The appellant/sole accused filed the present criminal appeal under Section 374 (2) of Cr.P.C., assailing the judgment, dated 16.04.2002 passed in Calendar Case No.39 of 1998 on the file of Principal Special Judge for SPE & ACB Cases, Hyderabad, whereunder and whereby, the Accused Officer was convicted of the offences under Sections 7 and 13(1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988 (for short 'the Act') and sentenced to undergo Rigorous Imprisonment for a period of one year and to pay a fine of Rs.500/-, in default of payment of fine, to undergo Rigorous Imprisonment for a period of three months, under each count.

2) The case of the prosecution reads as follows:

The accused Officer worked as Junior Assistant in 'K' Section of the Office of Deputy Commissioner of Police, City Armed Range (CAR) Head-quarters, Hyderabad, during January 1997. PW-1-Bokka Ramaswamy who was working as Police Constable with General No.8959 in CAR Head-quarters, Hyderabad was allotted to 'F' Coy. Originally he joined as constable in III Battalian of Armed Special Police in Kakinada on 10.10.1990 and after putting in five years of service, he applied for the post of Police Constable in CAR Head-quarters and he joined the same on 24.09.1995. After completion of training, he was allotted to 'F' Company. The basic pay for his post was Rs.1595/-. But earlier, he was drawing basic pay of Rs.1785/- as Constable in III Battalian. Hence, he gave representation, dated 30.08.1996, to the Deputy Commissioner of Police, CAR Head Quarters, with a request to protect his pay as per G.O.Ms.No.213 F &

P, dated 13.07.1983 and G.O.Ms.No.297 F & P, dated 10.10.1996. In this regard, he met the Accused Officer, who was working in 'K' Section and enquired him about the file. Thereupon, the Accused Officer demanded bribe of Rs.4,000/- for giving the pay fixation orders. On the representation of PW-1, D.C.P., CAR Head Quarters issued proceedings, protecting his pay. The Accused Officer prepared the bill for Rs.10,473/- and arrears were also paid to PW-1 on 24.01.1997, but his pay bill was pending. On 27.01.1997, PW-1 met the Accused Officer in his office and enquired him about his pay bill, which is pending with him. He requested him to send the pay fixation proceedings to his Company so that he can draw the new salary, but the Accused Officer reiterated his earlier demand of Rs.4,000/- for sending the proceedings to "F' Company. When PW-1 expressed his liability to pay the said amount, the Accused Officer reduced it to Rs.3,000/- and instructed him to pay it. Since PW-1 was not willing to pay the said amount, he met PW-5-DSP, ACB, City Range, Hyderabad, on 30.01.1997 and lodged Ex.P-1 complaint. After making discreet enquiries into the allegations of the complaint, the DSP, ACB, City Range, Hyderabad, registered the case against the Accused Officer on 31.01.1997 at 11.30 a.m., secured the services of PW-2-Senior Assistant and also one Nizam Shariff who was the Section Officer of the Office of the District Registrar, Hyderabad and with their help, laid trap against the Accused Officer, in his office on 31.1.1997 at about 1.45 p.m., after observing all formalities, which are necessary for a trap. When sodium carbonate test was conducted on the right hand of Accused Officer, it yielded positive result. The tainted amount of Rs.3,000/- wrapped in a brown sheet was recovered from the possession of Accused Officer, in the presence of mediators. The connected files were also seized from the office of the Accused Officer.

PW-7 & PW-8-Inspectors conducted further investigation into the case, obtained sanction order for prosecution from the Government and filed charge-sheet against the Accused Officer. Thus, the Accused Officer demanded and accepted bribe of Rs.3,000/- as illegal gratification from PW-1 for doing official favour i.e., dispatching pay fixation orders to 'F' Section.

3) When the charges leveled against the accused for the offence under Sections 7, 13 (1) (d) read with Section 13 (2) of Prevention of Corruption Act 1988 were read over and explained to the accused, he pleaded not guilty and claimed to be tried.

4) To substantiate the case against the accused, the prosecution examined PWs.1 to 7 and got marked Exs.P-1 to P-10, besides case properties Mos.1 to 9. On behalf of the accused, Ex.D-1 was marked.

5) The trial court after considering the evidence on record, especially, the evidence of PW-1, coupled with the recovery of tainted currency notes from the possession of the accused, found the appellant/accused guilty and accordingly he was convicted and sentenced as stated supra. Challenging the same, the present criminal appeal is filed.

6) Now the point that arises for determination is whether the prosecution proved its case beyond all reasonable doubt for the charges leveled against the accused for the offence under Sections 7, 13 (1) (d) read with 13 (2) of the Act and whether the judgment of the trial court is correct and legal.

7) The learned Senior Counsel appearing for the appellant contended that except the interested testimony of PW-1, there is no other evidence to corroborate his evidence; that his evidence with regard to the demand is inconsistent; that there is no need at all for the Accused Officer to demand PW-1 to give any bribe; that no official

favour to be shown by the accused was pending with him; that in the routine course, in discharging the official duties, the Accused Officer forwarded the proceedings of fixation of pay of PW-1 to the concerned Drawing Officer, in which PW-1 was working, and for the reasons best known to PW-1, he foisted a false case of this nature against the accused; that merely on the ground that the right hand fingers of the Accused Officer, which were rinsed in sodium carbonate solution, turned into pink colour and tainted currency notes were recovered from his possession, it cannot be inferred that there was mis-conduct on the part of the Accused Officer; that without knowing the fact that the tainted currency notes were kept by PW-1 on the table of the Accused Officer, he might have come into contact with the wrapper, which was applied with phenolphthalein powder and that long prior to the alleged demand and acceptance of illegal gratification, the proceedings relating to the pay fixation were dispatched to the concerned authority and these aspects have not been properly appreciated by the trial court. Hence, he prays to set aside the convictions and sentences recorded by the trial court.

8) On the other hand, the learned counsel Sri V.Ravi Kiran, appearing for the ACB contended that as the demanded bribe of Rs.3,000/- was not paid by PW-1, the proceedings relating to the pay scale fixed by the Deputy Commissioner of Police, Central Armed Reserve has not been dispatched to the concerned authority; that the bribe amount of Rs.3,000/- was recovered from the possession of the Accused Officer; that the chemical test conducted on the right hand fingers of the accused gave positive result; that seizure of tainted currency notes is not specifically denied or disputed; that after an elaborate consideration of evidence on record, the trial court rightly found the Accused Officer guilty and that the order of conviction does

not call for any interference by this court.

9) Under Section 7 of the Act, whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, is an offence punishable. Similarly, under Section 13 (1) (d) of the Act, a public servant is said to have committed criminal mis-conduct, if he obtains for any person any valuable thing or pecuniary advantage without any public interest and under Section 13 (2) of the Act, a public servant, who commits criminal misconduct is an offence punishable.

10) PW–1 was originally selected as Police Constable in the year 1990 and worked in A.P. Special Police, Kakinada for one year. There after, he worked on Deputation in the Special Security Force, Hyderabad for 4 ½ years. In the year 1995 while serving as a Constable on deputation in the Special Security Force, Hyderabad, he got selection as Police Constable in City Armed Reserve Headquarters, Hyderabad. After resigning the post of Police Constable in Andhra Pradesh Special Protection Force, he joined in the City Armed Reserve, Headquarters, Hyderabad, on 24.09.1995.

11) It is not in dispute that at that point of time, the basic salary of Constable in the City Armed Reserve was Rs.1595/-, whereas PW-1 was drawing the salary of Rs.1785/-. Therefore, he submitted a representation to the Deputy Commissioner of Police, Central Armed Reserve Headquarters, Hyderabad, for fixation of his basic pay at Rs.1825/-, by protecting his pay. The department considered his request and passed necessary orders for fixation of pay at Rs.1825/-. It is also not in dispute that the Accused Officer is the concerned Junior Assistant at 'K' (1) Section in the office of the Deputy Commissioner,

dealing with dispatching of proceedings of the Deputy Commissioner. In that connection, when PW-1 approached the Accused Officer, the Accused Officer told him that proceedings of the Deputy Commissioner have been received and for preparation of orders and to claim the arrears, PW-1 has to pay Rs.4,000/- as bribe. It is the specific case of the prosecution that the pay protection orders issued from the Section of the accused, have not been forwarded to the concerned section in the 'F' Company, in which PW-1 was working. On 27.01.1997 at about 2 p.m., PW1 again requested the Accused Officer to forward the pay fixation proceedings. The Accused Officer stated to him that unless Rs.4,000/- is paid, he would not forward the proceedings. As PW-1 was not willing to pay that amount, he approached the Deputy Superintendent of Police-PW-5 on 30.01.1997, and presented Ex.P-1 report. PW-5 registered a case and started investigation. He secured the presence of PWs.1 & 2 and another and on production of Rs.3,000/-, in 100 rupe denomination, he got applied phenolphthalein powder to the currency notes. He specifically instructed PW-1 not to touch the amount till the accused demands for it and prepared Ex.P-2-pre trap proceedings. Thereafter, at about 3.30 p.m., when the trap party along with PWs.1 & 2 went to the office of the Accused Officer, they found that the accused was not present. Then PWs.1 & 2 came out and informed about the same to the Deputy Superintendent of Police. They decided to wait till the arrival of the accused. At about 5.00 p.m., the Accused Officer came to his seat and when PWs.1 & 2 approached the Accused Officer, the accused questioned PW-1 whether he brought the bribe amount and demanded for the said amount. Then PW-1 took out the amount from his pocket and handed over the same to the Accused Officer. The Accused Officer received the bribe amount which was kept in a brown colour wrapper, with his

right hand, folded it and kept it on the table. After receipt of the pre-arranged signal, the trap party went to the office room of the Accused Officer. When the right hand fingers of the accused were subjected to sodium carbonate test, it gave positive result. When PW-5 enquired the Accused Officer where he kept the money, he showed the brown colour wrapper containing the money kept on his table. Then PW-5 seized the same and recorded Ex.P-7-post trap proceedings.

12) In the earliest report-Ex.P-1, it is stated that PW-1 submitted an application on 30.06.1996 to the Deputy Commissioner of Police, to fix his basic salary from Rs.1595/- to Rs.1825/ and when PW-1 enquired the Accused Officer about the pay fixation application, he replied that if he immediately gives the demanded bribe of Rs.4,000/- for sanctioning the bills, his pay will be fixed. It is also stated in Ex.P-1 that on 24.01.1997, PW-1 got sanction of arrears of Rs.10,473/- through 'G' Company. Since PW-1 did not pay the demanded bribe amount, the Accused Officer stopped to fix the pay of PW-1. Whereas in the evidence of PW-1, he stated that for preparation of the proceedings and to claim the arrears, the Accused Officer demanded to pay Rs.4,000/-. He admitted that on 24.01.1997, he received the arrears of Rs.10,473/- through 'G' Company without payment of any bribe, but the grievance of PW-1 is that the pay protection orders were issued by the Deputy Commissioner, but the Accused Officer has not forwarded to the concerned Section, in which the Accused Officer was working. He admitted in his cross examination that Accused Officer demanded bribe of Rs.5,000/- for getting the arrears bills passed and also for dispatching the proceedings. It is also an admitted fact that at no point of time, the Accused Officer approached PW-1 and demanded the bribe amount for dispatching the bills. The specific case of PW-1 from the beginning is that he received the arrears of pay. Since the

PW-1 was working in 'G' company, but not in the Office of the Deputy Commissioner of Police, Central Armed Reserve, A.O. is not the drawing officer. According to the Accused Officer, 'G' Company has drawn the arrears of pay and paid to PW-1 on 24.01.1997. Unless the pay fixation proceedings are finalized by the Deputy Commissioner of Police, CAR, Hyderabad, and are dispatched to the office where PW-1 was working, the question of drawing the arrears of salary does not arise. The evidence of PW-5 the Deputy Superintendent of Police would go to show that he had seen the file showing that Ex.D-1-Pay Protection Proceedings Orders were dispatched on 29.12.1996 itself, i.e., long prior to the alleged demand and also prior to the registration of the case itself.

13) The court can take a judicial note of the fact that unless the pay of an employee is fixed by the appointing authority, the question of drawing arrears of pay by the Drawing Officer does not arise. In this case, it is seen from the evidence of PW-5 that though the pay fixation proceedings of PW-1 had already been dispatched on 29.12.1996 itself, the same have not been paid to PW-1 upto 24.01.1997. Therefore, the allegation that when PW-1 met the Accused Officer on 27.01.1997, he demanded Rs.4,000/- as bribe appears to be false and incorrect. When pay protection order has been passed by the competent authority and that there was no delay on the part of the accused officer in forwarding the same to the disbursing officer, the question of making any enquiry with the Accused Officer does not arise. On 29.12.1996 itself, the proceedings have been forwarded to the 'F' company and the 'F' company in turn prepared the bills in pursuance of the pay fixation and drawn the arrears, but did not pay to PW-1 till 24.01.1997. Therefore, when there was no official favour to be done by the Accused Officer to PW-1 was pending, the question of

the Accused Officer demanding PW-1 towards dispatch of the proceedings or fixing the pay proceedings does not arise. Hence, the offence under Section 7 of the Act has not been proved beyond all reasonable doubt.

14) Now coming to the question of the offence under Section 13 (1) (d) read with Sections 13 (2) of the Act, whether the accused committed any mis-conduct and received the amount in the public interest in the pre-trap proceedings with regard to the smearing of phenolphthalein powder to the currency notes and keeping the same in the bag of PW-1 and to be handed over the same to the Accused Officer on demand, have been specifically mentioned. That aspect of the case is not seriously denied or disputed by the accused. It is the case of the prosecution that after receipt of the pre-arranged signal from PW-1, the trap party headed by PW-5 rushed to the office of Accused Officer and after disclosing the identity, the right hand fingers of the Accused Officer were subjected to sodium carbonate solution test AND the solution turned into pink colour, and when the Accused Officer was asked about the bribe amount, he produced the currency notes and then the Investigating Officer seized the currency notes wrapped in a brown cover. Thereafter post trap proceedings were drafted. On this aspect, the evidence of PW-1 is clear that the DSP, ACB City Range, Hyderabad, specifically instructed him to hand over the currency notes to the Accused Officer only on his demand and that when the Accused Officer demanded the amount, he picked out the bribe amount from his shirt pocket and handed over the same to the Accused Officer, then the Accused Officer folded the currency notes in brown colour wrapper and kept the same on his table. Whereas in the evidence of PW-2, it is stated that he stood at a distance of 10 feet from PW–1 and observed some gestures between the Accused Officer

and PW-1 and saw their lip movement. PW-2 also observed that when the Accused Officer asked PW-1 about the amount, PW-1 removed amount from the shirt pocket and handed over the same to the Accused Officer. It is further clear from his evidence that when PW-5 enquired about the bribe amount, the Accused Officer produced brown colour wrapper from the table drawer, whereas the evidence of PW-5 would go to show that when he enquired the Accused Officer as to whether he got the money given by PW-1, he showed one brown colour wrapper, which was kept on his table. The manner of giving tainted currency notes as spoken to by PW-1 is totally inconsistent with the evidence of PW-2. Similarly, there is a contradiction with regard to the place where the amount has been seized. It is in the evidence of PW-2 that the amount had been taken out from the drawer of the table, whereas it is in the evidence of PWs.1 & 5 that the amount was seized from the top of the drawing table. Similarly, there is a discrepancy with regard to the prosecution witnesses waiting at the office of the accused. According to PWs.1 & 2, when they went to the office of the Accused Officer at about 3.30 p.m., he was not available and when the said fact was informed to the Deputy Superintendent of Police by PWs.1 & 2, the DSP instructed them to wait till the arrival of the Accused Officer. The evidence of PW-5 is totally contradictory on this aspect. His evidence would go to show that PWs.1 & 2 did not come to him and said that the Accused Officer was not available in his seat and they waited there. The Investigating Officer also admitted that except the allegations in the F.I.R., there was no other material available for filing the charge sheet. Therefore, there is a discrepancy with regard to the manner of receiving the tainted currency notes. If the amount was given in a brown colour wrapper, the possibility of the accused touching that cover without knowing the contents cannot be

ruled out. In such a case, his fingers would have come into contact with the phenolphthalein powder. Another important circumstance is that if really the accused received the bribe amount, he would have counted the same and kept it in the pocket of his pant or shirt and there was is no need for him to wrap the tainted currency notes in a brown colour paper and keep it on the table. No doubt, the accused was not in a position to say how his right hand fingers came into contact with phenolphthalein powder, but at the same time, the burden never shifts to the accused for the offence under Section 13 (1) (d) read with 13 (2) of the Act and the burden is always on the prosecution.

15) For the reasons best known to PW-1, he made use of the services of Anti Corruption Bureau to involve the accused, though by the date of demand of bribe amount, as per the records, no official favour to be shown by the Accused Officer to PW–1 was pending. In the absence of any official favour to be done or shown by the accused, the question of demand of any amount does not arise. The entire grievance of PW-1 is that pay fixation proceedings have not been forwarded to the office, in which he was working. There is clear evidence that those proceedings had been dispatched on or after 29.12.1996. Those proceedings must have been received by the Disbursing Officer of PW-1 within a period of one week or 10 days thereafter. Unless the Disbursing Officer of PW-1 received the proceedings, they could not prepare the bill and forward the same to the Treasury for withdrawal of the amount. After fixation of pay of PW-1, the Disbursing Officer of PW-1 must have received the amount from the Treasury, in the third week of January, 1997 and PW-1 received the same on 24.01.1997. In these circumstances, the evidence of PW-1 cannot be put in the category of wholly reliable evidence. In such case, his evidence requires corroboration. But there is no such

corroboration either direct or circumstantial. The services of Anti Corruption Bureau were misused by PW–1 and for the reasons best known to him, the trap proceedings have been initiated against the accused. These aspects have not been taken into consideration by the trial court in appreciating the admissible evidence available on record and gave a perverse finding that the accused demanded and accepted the bribe amount through PW-1. Therefore, the judgment under challenge has to be set aside.

16) Hence, the judgment dt.16.04.2002 passed in C.C.No.39 of 1998 on the file of Principal Special Judge for SPE & ACB Cases, Hyderabad, is set aside. The appellant/accused is found not guilty and accordingly, acquitted of the charges leveled against him. The bail bonds of the accused shall stand cancelled. The fine amount if any, paid by him, shall be refunded to him.

17) The criminal appeal is allowed.

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K.C.BHANU J.,

Dt.19.06.2009
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